

08-CV-05172-CMP

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

Richard Tyler Frazer,

Plaintiff,

vs.

The United States of America; The United

States Patent and Trademark Office;

Michael Carone, Supervisory Patent Examiner;

John Dudas, Commissioner of Patents;

John Radi, Patent Examiner; and

Lulit Semunegus, Patent Examiner,

Defendants.

C08 5172 RBL

COMPLAINT

FOR DAMAGES

Parties to this Complaint:

Plaintiff:

Richard Tyler Frazer

9 Poplar Road # 41

Montesano, Washington 98563

(360) 249-5441

COMPLAINT FOR DAMAGES
Case No.

Page 1 of 23

Richard Tyler Frazer
9 Poplar Road # 41
Montesano, WA. 98563
(360) 249-5441

Defendants:

1. The United States of America

United States Department of Justice

United States Attorney General

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530

2. United States Patent and Trademark Office

Office of the General Counsel

10B20, Madison Building East

600 Dulany Street

Alexandria, VA

(571) 272-7000

3. Michael Carone, in his official capacity as Supervisory Patent Examiner for the United States Patent and Trademark Office

4. John Dudas, in his official capacity as Commissioner of Patents for the United States Patent and Trademark Office

5. John Radi, in his official capacity as Patent Examiner for the United States Patent and Trademark Office

6. Lulit Semunegus, in her official capacity as Patent Examiner for the United States Patent and Trademark Office

Jurisdiction:

Jurisdiction in this action is predicated upon:

United States Code, Title 28, Sections 1331, 1332 and 1346(b);

The Constitution of the United States, Article 1, Section 8, in part, which reads, "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.";

The Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States; and

The Equal Access to Justice Act (EAJA), United States Code, Title 5, Section 504 and United States Code, Title 28, Section 2412

Statement of Claim:

Plaintiff spent four years drafting an application for a Non-provisional Utility Patent in which he was solely responsible for all aspects of said application.

On August 14, 2003, Plaintiff mailed his Non-provisional Utility Patent Application entitled "Method of Propulsion and Attitude Control in Fluid Environments and Vehicles Utilizing Said Method," by first class United States Postal Service mail, to the United Patent and Trademark Office (USPTO) at the address of: Mail Stop Patent Application, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Plaintiff included with this patent application: (1) UTILITY PATENT APPLICATION TRANSMITTAL, 1 page, form PTP/SB/05 (80-03); (2) FEE TRANSMITTAL for FY 2003, 2 pages, form PTO/SB/17 (08-03); (3) \$375.00 cashiers check as BASIC FILING FEE; (4) Application Data Sheet, 2 pages; (5) Information Disclosure Statement (IDS), 1 page, (6) Copies of IDS related documents, 301 pages and (7) Return Postcard.

1 Plaintiff's Non-provisional Utility Patent Application was filed with the United States
 2 Patent and Trademark Office on August 18th, 2003, and was assigned the Application Number:
 3 10/642,554.

4 According to the document entitled, "CONFIRMATION NO. 4243, FILING RECEIPT,"
 5 henceforth referred to as, "FILING RECEIPT," mailed on November 13th, 2003, Plaintiff's
 6 patent application was first assigned to Art Unit 3617. Art Unit 3617 encompasses
 7 classifications:

- 8 1. 104, Railways
- 9 2. 105, Railway Rolling Stock
- 10 3. 114, Ships
- 11 4. 152, Resilient Tires and Wheels
- 12 5. 191, Electricity: Transmission to Vehicles
- 13 6. 213, Railway Draft Appliances
- 14 7. 238, Railways: Surface Track
- 15 8. 246, Railway Switches
- 16 9. 258, Railway Mail Delivery
- 17 10. 278, Land Vehicles: Animal Draft Appliances
- 18 11. 291, Track Sanders
- 19 12. 295, Railway Wheels and Axles
- 20 13. 301, Land Vehicles: Wheels and Axles
- 21 14. 305, Wheels Substitutes for Land Vehicles
- 22 15. 440, Marine Propulsion
- 23 16. 441, Buoys, Rafts and Aquatic Devices

24 Listed as third criteria in Plaintiff's document entitled, "Application Data Sheet,"
 25 concerning, "Suggested Classification," Plaintiff suggested United States Classification/sub-
 26 classification, "244/12.3," as to which classification Plaintiff believed to be the closest
 27 classification to which his invention was related. Classification 244/12.3 encompasses:
 28
 29 *"Apparatus wherein the aeronautical machine comprises separate and distinct power plants or*
 30 *motive means, at least one of the motive means being used solely for forward or horizontal*
 31 *propulsion and at least one other motive means solely for lift or vertical propulsion."*
 32

33 Listed as fourth criteria in Plaintiff's document entitled, "Application Data Sheet,"
 34 concerning, "Suggested Group Art Unit," Plaintiff suggested Art Unit, "3644," as to which Art
 COMPLAINT FOR DAMAGES
 Case No.

1 Unit Plaintiff believed to be the closest Art Unit to which his invention was related. Art Unit
2 3644 encompasses:

- 3 1. 244, *Aeronautics and Astronautics*
4 Classification/sub-classification, 244/12.3, falls under Art Unit 3644.

5 According to the USPTO document entitled, "RFP DOC-52-PAPT -07-01001, Attachment
6 1, Appendix to Statement of Work/Specifications, page 1, under the heading, 'USPTO Mission
7 and Work Environment,' sub-heading, "Patent Organization," relevant part:

8 *"Each Technology Center is comprised of Groups and each Group is subdivided into Art Units.*
9 *Art Unit examiners specialize in a specific subset of technologies, which is referred to as the*
10 *"art" that they examine."*
11

12 On January 27th, 2005, more than 17 months from the filing date of Plaintiff's patent
13 application, Plaintiff phoned the USPTO, at the phone number of, (703) 306-5960, to ascertain
14 the status of Plaintiff's patent application as Plaintiff had yet to receive any communication
15 regarding the examination/prosecution of Plaintiff's patent application, excepting the
16 aforementioned FILING RECEIPT. Plaintiff was told by an employee of the USPTO the phone
17 number to Art Unit 3617 was (703) 306-4198. Plaintiff then phoned Art Unit 3617 at the phone
18 number, (703) 360-4198, and was told that his patent application had been reassigned to Art Unit
19 3641. Plaintiff then re-phoned the USPTO at the phone number, (703) 360-5960 and asked for
20 the phone number to Art Unit 3641. Plaintiff was then transferred to Art Unit 3641, where he
21 left a message inquiring as to the status of Plaintiff's patent application. Plaintiff left his name
22 and application number. Lulit Semunegus returned Plaintiff's phone call and informed Plaintiff
23 of her decision to require restriction in regards to Plaintiff's patent application. Plaintiff asked
24 that said requirement and the reason for which be made in writing, as there was a bad phone
25 connection.

1 According to the cover sheet of the First Office Action, henceforth referred to as, "FOA,"
 2 mailed upon March 30th, 2005, Plaintiff's patent application had been reassigned to Art Unit
 3 3641. Art Unit 3641 encompasses:

- 4 1. 33, Geometrical Instruments
- 5 2. 42, Firearms
- 6 3. 86, Ammunition and Explosive-Charge Making
- 7 4. 89, Ordnance
- 8 5. 102, Ammunition and Explosives
- 9 6. 114, Ships
- 10 7. 124, Mechanical Guns and Projectors
- 11 8. 244, Aeronautics and Astronautics (Sub-class 3.13)
- 12 9. 976, Nuclear Technology

13
 14 Regarding number 8, listed above, classification/sub-classification 244/3.13, the only
 15 classification/sub-classification that falls under Art Unit 3641 in regards to classification 244,
 16 encompasses:

17 *"Subject matter in which the missile is directed to a target by a beam of electromagnetic wave*
 18 *energy which is transmitted from the command source to the target."*
 19

20 The Manual of Patent Examination Procedure, Eighth Edition, Revision 2, May 2004,
 21 henceforth referred to as, "MPEP," is the applicable manual of said name at the time of the
 22 Plaintiff's patent application.

23 According to MPEP 903.08, relevant part:

24 *"Applicant may be advised of expected application transfers by using Form Paragraph 5.03."*
 25 *"5.03 Reassignment Affecting Application Location*

26 *The Art Unit location of your application in the USPTO has changed. To aid in*
 27 *correlating any papers for this application, all further correspondence regarding this*
 28 *application should be directed to Art Unit [1].*

29 *Examiner's Note:*

30 *This paragraph should be used in all Office actions when the location of an application is*
 31 *changed due to a reassignment of the art, transfer of the application to a different Art Unit, or*
 32 *transfer of an examiner and the examiner's docket."*
 33

1 By assigning Plaintiff's patent application to Art Unit 3617, first, and then reassigning
2 said patent application to Art Unit 3641, and not assigning the Plaintiff's application to the
3 proper Art Unit, 3644, as indicated by classification/sub-classification, to which it was most
4 closely related, the USPTO was negligent in providing qualified personnel to perform
5 examination/prosecution of Plaintiff's patent application.

6 Without the specialized knowledge of the proper examiner of the proper Art Unit, the
7 USPTO created a situation in which Plaintiff was forced to attempt to try to explain to the
8 assigned examiner specialized knowledge regarding art she was not knowledgeable of.

9 This act of negligence injured Plaintiff's ability to successfully prosecute Plaintiff's
10 patent application.

11 The USPTO failed to inform Plaintiff of reassignment of Plaintiff's patent application
12 from Art Unit 3617 to Art Unit 3641.

13 This act of negligence injured Plaintiff's ability to ascertain the status of Plaintiff's patent
14 application and created undue hardship in ascertaining just where Plaintiff's patent application
15 was being prosecuted/examined and just what Art Unit and examiner was responsible for said
16 examination/prosecution.

17 According to the FOA, examination/prosecution of said patent application was assigned
18 to Lulit Semunegus, as Primary Examiner, under the supervision of Supervisory Patent
19 Examiner, Michael Carone.

20 According to MPEP 903.08(b), relevant part:

21 *"The supervisory patent examiner normally assigns the application..."*
22

23 Lulit Semunegus was employed by the USPTO from October 31st, 2000, date derived
24 from first patent granted bearing her name as either assistant or primary examiner, until July 20th,

1 2005, date derived from Second Office Action, henceforth referred to as, "SOA." By these
2 calculations, Ms. Semunegus was employed by the USPTO in an examiner, assistant or primary,
3 capacity for approximately five years.

4 During Ms. Semunegus's tenure as an employee of the USPTO, she was responsible, as
5 an assistant examiner, for 263 patents granted.

6 Of those 263 patents granted, Ms. Semunegus was assistant examiner to Mr. Carone,
7 primary examiner, for 185 of those patents granted. This relationship accounted for more than
8 70% of the patents granted by Ms. Semunegus as an assistant examiner.

9 Of those 263 patents granted in which Ms. Semunegus was an assistant examiner, 8
10 patents granted concerned classification 244, Aeronautics and Astronautics, in regards to
11 complete machines. Patents granted under this classification accounted for 3% of Ms.
12 Semunegus's total of patents granted, as an assistant examiner, over her tenure with the USPTO.
13 Mr. Carone was primary examiner on all, 100%, of these patents granted.

14 Of those 263 patents granted in which Ms. Semunegus was an assistant examiner, a
15 majority concerned sub-classifications 33, 42, 86, 89, 102, 114, and 124 and miscellaneous
16 classifications. Patents granted under these classifications accounted for 97% of Ms.
17 Semunegus's total of patents granted, as an assistant examiner, over her tenure with the USPTO.

18 During Ms. Semunegus's tenure as an employee of the USPTO, she was responsible, as a
19 primary examiner, for 1 patent granted, patent number 6,877,268.

20 Mr. Carone, or his assignee, was negligent in assigning Plaintiff's patent application to
21 Ms. Semunegus.

1 The record of Ms. Semunegus's tenure shows that she lacked experience in regards to
2 examining/ prosecuting patents in regards to the Art to which Plaintiff's invention is most closely
3 related.

4 The record of Ms. Semunegus's tenure shows that she lacked experience in regards to
5 examining/ prosecuting patents as a primary examiner. She was employed by the USPTO for
6 about 3 years, considering the Plaintiff's filing date for Plaintiff's patent application, when she
7 was assigned to said patent application as primary examiner.

8 Ms. Semunegus's close association with Mr. Carone in examining/prosecuting a majority
9 of the patents granted during said tenure further shows that Mr. Carone was knowledgeable of
10 Ms. Semunegus's limitations in regards to experience in relevant Art and in the capacity of a
11 primary examiner.

12 As it may be raised by the USPTO that it was a discretionary decision to assign Plaintiff's
13 patent application to Ms. Semunegus for examination/prosecution, it is the Plaintiff's position
14 that whoever made that assignment did not display due diligence in making said assignment.
15 The record of Ms. Semunegus's tenure, work-load, area of expertise and lack of experience as a
16 primary examiner are all factors which would be taken into consideration in making a proper
17 assignment of Plaintiff's patent application for an appropriate examination/prosecution of said
18 patent application. By ignoring these factors, whoever assigned the Plaintiff's patent application
19 to Ms. Semunegus was negligent in providing the Plaintiff with a qualified examiner, thereby
20 injuring the Plaintiff's ability to prosecute Plaintiff's patent application.

21 According to the United State Code, Title 35, Section 121, relevant part:

22 *"If two or more independent and distinct inventions are claimed in one application, the Director*
23 *may require the application to be restricted to one of the inventions."*
24

25 According to the Code of Federal Regulations, Title 37, Section 1.141:

1 *"Two or more independent and distinct inventions may not be claimed in one national*
 2 *application, except that more than one species of an invention, not to exceed a reasonable*
 3 *number, may be specifically claimed in different claims in one national application, provided the*
 4 *application also includes an allowable claim generic to all the claimed species and all the claims*
 5 *to species in excess of one are written in dependent form or otherwise include all the limitations*
 6 *of the generic claim."*

7 *Historical and Revision Notes*

8 *This section enacts as law existing practice with respect to division, at the same time introducing*
 9 *a number of changes. Division is made discretionary with the Commissioner. The requirements*
 10 *of section 120 are made applicable and neither of the resulting patents can be held invalid over*
 11 *the other merely because of their being divided in several patents. In some cases a divisional*
 12 *application may be filed by the assignee."*

13
 14 According to LAW.COM Dictionary:

15 *And-conj. This little word is important in law, particularly when compared to or. Most*
 16 *commonly it determines if one or both owners have to sign documents. Example: when an*
 17 *automobile registration reads that the title is for Barney and Sarah Oldfield, then both must sign*
 18 *off upon sale, but if it says "or" then only one will have to sign; if Barney dies then the title is*
 19 *automatically in Sarah's name if it reads "or," but not if it reads "and."*

20
 21 *Or-conj. Either; in the alternative. It is often vital to distinguish between "or" and "and."*
 22 *Example: Title to the Cadillac written "Mary or Bill Davidson" means either one could transfer*
 23 *the car, but if written "Mary and Bill Davidson," both must sign to change title.*

24
 25 According to United States Code, Title 35, Section 2(b), relevant part:

26 *"(2)May establish regulations, not inconsistent with law, which. (A) shall govern the conduct of*
 27 *proceedings in the Office;"*

28
 29 The USPTO has devoted an entire section to restriction based upon 35 USC, 121 and 37
 30 CFR, 1.141, see MPEP Section 800.

31 The USPTO has taken the position that it is permissible to require restriction based upon
 32 either Independence or Distinctness. See MPEP 800. The USPTO does not have the authority of
 33 law as it is written to require restriction in the alternative sense of "Independent" or "Distinct."
 34 The applicable law and statute, mentioned above, is strictly written in both as stating,
 35 "independent and distinct," meaning that in order to require restriction, an invention must meet

1 both qualifications, not one or the other. The USPTO's interpretation of the relevant law and
2 regulation is inconsistent with the law as it is written and is therefore negligent as interpretation
3 of law in this sense is not discretionary. Further more, as requirement for restriction is a
4 discretionary matter for the Director, the law as it is written must be abided by in order to invoke
5 such a discretionary power.

6 The USPTO in its interpretation of law and regulation in regards to the requirement for
7 restriction gives the USPTO the power to require restriction in which there is no basis in the
8 applicable laws or regulations as written. The USPTO has given itself more power than
9 applicable law or regulation allows.

10 If Congress intended to allow the Director of the USPTO the discretion of requirement
11 for restriction in the alternative sense of either "Independence" or "Distinctness," Congress
12 could, should or would have written, "independent or distinct," not "independent and distinct."

13 This act of negligence made a grey area in patent law even more indistinct, injuring
14 Plaintiff's ability to prosecute Plaintiff's patent application. Furthermore, Plaintiff asserts that
15 this act of negligence allows for arbitrary and capricious requirements for restriction in which the
16 USPTO has no authority to exercise.

17 As stated before, the USPTO has devoted an entire section of MPEP to Restriction,
18 MPEP section 800, in which examiners are given to believe that it may be proper to require
19 restriction in the alternative sense of either "Independent" or "Distinct" inventions. See MPEP
20 802.01 and 803.

21 By negligently applying 35 USC 121 and 37 CFR 1.141 in its drafting of MPEP section
22 800, the USPTO has erroneously informed its examiners that they have the authority to require
23 restriction in cases in which there is no authority to do so derived by law.

1 This act of negligence injured the Plaintiff's ability to prosecute Plaintiff's patent
2 application by forcing Plaintiff to address an erroneous requirement for restriction.

3 FOA was mailed on March 30th, 2005, over 19 months from the filing date of Plaintiff's
4 patent application. A shortened statutory period for reply of 1 month was set.

5 Plaintiff mailed APPLICANT'S REPLY, henceforth referred to as "AP1," on April 27th,
6 2005.

7 Ms. Semunegus negligently required restriction pursuant to 35 U.S.C., section 121, based
8 solely upon her perception that the method and vehicle were distinct. Claim 1, line 1, clearly
9 claims a method of propulsion and attitude control applicable to all fluid environments, not just a
10 V/STOL aircraft as Ms. Semunegus asserts in the FOA. Ms. Semunegus selectively chose to
11 ignore the plain language of the claim and the specification and figures in rendering her own
12 opinion as to what was described and claimed.

13 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application.

14 On page 2 of the FOA, section 1, directly following the second paragraph, Ms.
15 Semunegus negligently omits form paragraph 8.13 and disregards MPEP 816, in describing why
16 the process and product were distinct.

17 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application.

18 On page 2 of the FOA, section 1, directly following the second paragraph, Ms.
19 Semunegus negligently omits form paragraph 8.21.02.

20 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application.

21 On page 2 of the FOA, section 1, last paragraph, Ms. Semunegus negligently uses the
22 word, "thought," for the word, "though."

1 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
2 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

3 On page 2 of the FOA, section 2, first paragraph, Ms. Semunegus negligently uses the
4 word, "persecution," for the word, "prosecution."

5 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
6 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future. This misuse of
7 the word, "persecution," could also be taken as a warning or threat.

8 On pages 2 and 3, of the FOA, section 2, directly following the first paragraph, Ms.
9 Semunegus negligently uses two different means to describe the figures.

10 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
11 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

12 On page 3, of the FOA, section 2, third paragraph, Ms. Semunegus negligently omits the
13 word, "of," between the words "listing" and "all."

14 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
15 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

16 On page 3, of the FOA, section 2, directly following the third paragraph, Ms. Semunegus
17 negligently inserts paragraph form 8.21.02 in the middle of paragraph form 8.01.

18 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
19 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

20 On page 3, of the FOA, section 2, fifth paragraph, Ms. Semunegus negligently uses the
21 word, "depend," for the word, "dependant."

22 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
23 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

1 On pages 3 and 4, of the FOA, Ms. Semunegus negligently omits any Conclusion.

2 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
3 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

4 On pages 3 and 4, of the FOA, Ms. Semunegus negligently omits section 3., as the
5 numbered sections of the FOA progress directly from 2 to 4.

6 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
7 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

8 At the end of the FOA, Ms. Semunegus, negligently omits the date of drafting of this
9 Office Action and her initials. See MPEP 707.11.

10 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
11 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

12 The Second Office Action (SOA) was mailed on August 12th, 2005, over 23 months from
13 the filing date of Plaintiff's patent application. A shortened statutory period for reply of (3) three
14 months was set.

15 Plaintiff mailed APPLICANT'S REPLY TO SECOND OFFICE ACTION, henceforth
16 referred to as "AP2," on February 8th, 2005, along with the document form PETITION FOR
17 EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2005.

18 On page 2, of the SOA, section 1, first paragraph, Ms. Semunegus negligently uses the
19 word, "glasses," for the word, "gases."

20 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
21 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future. Furthermore this
22 act of negligence injured Plaintiff by forcing Plaintiff to address an issue of medium not claimed
23 by the Plaintiff in the patent application.

1 On page 2, of the SOA, section 1, second paragraph, Ms. Semunegus determined that the
2 requirement for restriction was proper and therefore FINAL.

3 Ms.Semunegus ignored the plain language of the claims, specification, figures and the
4 arguments presented in Plaintiff's AP1 that the invention functioned in ALL fluid mediums. Ms.
5 Semunegus ignored the assertion made by the Plaintiff that his invention could be made to
6 encompass all fluid environments.

7 Example: The North American Dipper Bird and Diving Petrels utilize their wings as
8 main propulsion and attitude control in both air and water. Both birds essentially "fly" through
9 the air and water. By Ms. Semunegus's argument, the method used by these birds to propel and
10 control themselves in two different fluid environments are two distinct inventions, even though
11 they utilize the exact same structures in the same way with the same methodology. Or, the birds,
12 each and of themselves, should be considered as distinct inventions, one that flies and one that
13 swims. Both birds can fly like a conventional aircraft, hover like a helicopter or VTOL, propel
14 themselves on the surface like a boat and dive like a submarine. Plaintiff only used the
15 terminology available in describing the capacity, use and methodology of Plaintiff's invention.
16 See, Title of Invention. See MPEP 2173.05(a)(II).

17 As there is currently no applicable classification for the Plaintiff's invention, Plaintiff
18 relied upon the structural nature of Plaintiff's invention in assessing the classification and Art
19 most nearly related to said invention. Such related classification should not be solely used to
20 assess the invention, rather, a reading of the specification and figures should be used in
21 determining new/original classification.

22 The requirement for restriction had no legal basis and no logical basis, only Ms.
23 Semunegus's selective interpretation of an Art which she had insufficient knowledge of. By

1 being selective in her interpretation and arguments, Ms. Semunegus was negligent in assessing
2 the invention taken as a whole as described in the specification and figures and as claimed.

3 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
4 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

5 On pages 2 and 3, of the SOA, section 3, first paragraph, Ms. Semunegus states, "The
6 specification does not describe the manner or make obvious how electric, hydraulic or steam
7 motors are actually used as the drive fans for this particular vehicle, specifically examiner is
8 unsure how a steam or hydraulic motor will work as a drive fan for this particular vehicle.
9 Furthermore, the specification does not describe or make obvious how and where the mounting
10 points for the drive-fans and drive components are placed or utilized."

11 Ms. Semunegus was negligent in her reading of the specification and figures. (See Patent
12 Application, Page 23, [120], lines 1-3, pages 31-32, [147, 149], and FIGS. 19a-19c).

13 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
14 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

15 On page 3, of the SOA, section 5, first and second paragraph, Ms. Semunegus, uses
16 paragraph form 7.34.15, and negligently omits any use or application of MPEP 707.07(j)(I, II
17 and III).

18 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
19 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

20 On page 3, of the SOA, section 5, third paragraph, Ms. Semunegus, inserts paragraph
21 form 7.34.02, and negligently omits the following portion of said paragraph,

22 *"The term "[1]" in claim [2] is used by the claim to mean "[3]", while the accepted meaning is*
23 *"[4]." The term is indefinite because the specification does not clearly redefine the term."*
24

1 According to the Examiner's Note pertaining to this paragraph form:

2 *"4. This paragraph should only be used where the specification does not clearly redefine the*
3 *claim term at issue."*

4 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
5 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

6 On page 3, of the SOA, section 6, Ms. Semunegus, lists terms which she views as
7 indefinite.

8 Ms. Semunegus utilizes an abbreviated form of paragraph form 7.34.08 which reads:

9 *"Regarding claim [1], the phrase "for example" renders the claim indefinite because it is*
10 *unclear whether the limitation(s) following the phrase are part of the claimed invention. See*
11 *MPEP, section 2173(d)."*
12

13 Ms. Semunegus is negligent in her subjective view that these terms are indefinite. Ms.
14 Semunegus has no lawful, regulatory or rule based authority beyond her naked assertion that
15 these terms are indefinite to reject said claims. Ms. Semunegus provides no prima facie evidence
16 as to why these terms are indefinite. See MPEP 2111, MPEP 2173(d), MPEP 2173.05(a)(II),
17 MPEP 2173.05(b)(A-F), MPEP 2173.05(h)(II).

18 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
19 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

20 On page 4, of the SOA, section 7, Ms. Semunegus, lists terms which she views as not
21 descriptive.

22 Ms. Semunegus utilizes an abbreviated form of paragraph form 7.34.09 which reads:

23 *"Regarding claim [1], the phrase "or the like" renders the claim(s) indefinite because the*
24 *claim(s) include(s) elements not actually disclosed (those encompassed by the "or the like")*
25 *thereby rendering the claim(s) unascertainable. See MPEP, section 2173(d)."*
26

1 Ms. Semunegus is negligent in her subjective view that these terms not descriptive. Ms.
2 Semunegus has no lawful, regulatory or rule based authority beyond her naked assertion that
3 these terms are not descriptive to reject said claims. Ms. Semunegus provides no prima facie
4 evidence as to why these terms are not descriptive. See MPEP 2173(d). See also MPEP 2111,
5 MPEP 2173.05(a)(II), MPEP 2173.05(b)(A-F).

6 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
7 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

8 On page 4, of the SOA, section 8, Ms. Semunegus, lists the term "the dihedral" in which
9 she negligently asserts that there is no antecedent basis for the limitation in this claim. Ms.
10 Semunegus also ignores section MPEP 2173.05(e) in regards to suggesting corrections to
11 antecedent problems.

12 Ms. Semunegus utilizes paragraph form 7.34.05, to make this rejection of claim 2:

13 Dihedral is clearly explained in the specification, pages 25-26, and illustrated by figures,
14 FIGS. 12a-12b.

15 Dihedral is a common term used in aeronautics to describe the angle of a wing in relation
16 to the horizontal plain.

17 Example: Try a Google Search using these three words, "definition", "wing" and
18 "dihedral."

19 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
20 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

21 On page 4, of the SOA, section 9, Ms. Semunegus, negligently omitted the last digit of
22 the patent regarding Melkuti, listing his patent as "(5,454,53)." The Melkuti patent is patent
23 number "5,454,531."

1 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
2 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

3 On page 4, of the SOA, section 9, Ms. Semunegus, negligently asserts that the patent
4 regarding Melkuti, patent number 5,454,531, is pertinent to Plaintiff's patent application.

5 Melkuti consists of a main fan centrally located under the fuselage with an auxiliary fan
6 in each wing assembly. There is no mention or depiction of triangulated structures or
7 components beyond the arrangement of the fans themselves in relation to each other. There is no
8 mention or depiction of hexagonal cell, framework.

9 Ms. Semunegus's interpretation of Melkuti in regards to the Plaintiff's patent application
10 and invention is over-simplified.

11 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
12 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

13 The USPTO was negligent in mailing the SOA in a timely manner as it carried a drafting
14 date of 7/20/2005 and was not mailed until 8/12/2005. Twenty-three (23) days elapsed between
15 drafting of the SOA and its mailing.

16 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
17 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

18 The Plaintiff phoned Ms. Semunegus on August 17th, 2005, at the phone number recited
19 in the SOA, (571) 272-6882, to clarify issues regarding the SOA. Plaintiff was informed by a
20 recorded message stating that the phone number dialed was no longer in service.

21 Plaintiff then immediately phoned Mr. Carone on August 17th, 2005, at the phone number
22 recited in the SOA, (571) 272-6873, to clarify issues regarding the SOA. Plaintiff was informed
23 by Mr. Carone that (1) Ms. Semunegus was no longer employed by the USPTO in an examiner

1 capacity of Plaintiff's patent application, (2) that he, Mr. Carone, was not familiar with the
2 Plaintiff's patent application, (3) that Plaintiff's patent application had just been reassigned to
3 John Radi, Art Unit 3641, and (4) Plaintiff was given the phone number to contact Mr. Radi,
4 (571) 272-1000.

5 On or about August 20th, 2005, Plaintiff started to hemorrhage internally as evidenced
6 from copious amounts of blood in defecation.

7 On January 30th, 2006, error in date in AP2 of January 27th, 2006, by Plaintiff, Plaintiff,
8 phoned Mr. Radi, at the phone number of (571) 272-1000, to clarify issues regarding Plaintiff's
9 patent application. Plaintiff was informed by an employee of the USPTO that Mr. Radi had a
10 new phone number, (571) 272-5883. Plaintiff phoned Mr. Radi at this number and was told by
11 Mr. Radi that he could not review Plaintiff's patent application until Plaintiff answered the SOA.
12 Plaintiff was also told that he, Mr. Radi, was a new hire. Plaintiff informed Mr. Radi of his
13 health problems and his confusion over the SOA and his need to clarify certain issues. Mr. Radi
14 reiterated that he could not review the Plaintiff's patent application until he received a reply to
15 the SOA.

16 Plaintiff phoned Mr. Radi on February 2nd, 2006, and told him that he would soon be
17 mailing his reply to the SOA, and he would appreciate it if Mr. Radi talked to Mr. Carone as to
18 waiving the fees applicable to the late reply. Plaintiff was told by Mr. Radi that he would discuss
19 waiving fees with Mr. Carone as to the Plaintiff's assertion that the lateness was due to not being
20 able to clarify issues regarding the SOA and health issues.

21 To reiterate, Plaintiff mailed his AP2 and PETITION FOR EXTENSION OF TIME
22 UNDER 37 CFR 1.136(a) FY 2005 with instructions for whoever was responsible for processing
23 said form to contact Mr. Carone at (571) 272-6873 regarding fees, on February 8th, 2006.

1 On March 31st, 2006, Plaintiff, received Notice of Abandonment, mailed March 28th,
2 2006, for the reason:

3 *"A reply was received with a request for extension of time, however appropriate fees were not*
4 *included in accordance with 37 CFR 1.17(a)(3)."*
5

6 Forty-eight (48) days elapsed between Plaintiff's AP2 and the Notice of Abandonment.

7 The USPTO was negligent in informing the Plaintiff of a change in examiner. (See
8 MPEP 903.08)

9 This act of negligence injured Plaintiff's ability to prosecute Plaintiff's patent application
10 as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

11 The USPTO was negligent in providing the Plaintiff with an examiner knowledgeable of
12 Plaintiff's patent application, thereby injuring Plaintiff's ability to clarify issues regarding the
13 SOA. At this point the USPTO effectively abandoned the prosecution of Plaintiff's patent
14 application. (See MPEP 708.03)

15 This act of negligence severely injured Plaintiff's ability to prosecute Plaintiff's patent
16 application as well as injured Plaintiff's ability to defend Plaintiff's invention in the future.

17 The examination/prosecution of Plaintiff's patent application was totally destructive in
18 nature. Arguments and naked assertions made by Ms. Semunegus lacked any examples or
19 reasoning, relying on mere conclusion without any prima facie evidence to validate her
20 arguments or assertions. MPEP 707.07(j)(II) reads in part:

21 *"The examiner's action should be constructive in nature..."*
22

23 Plaintiff mailed by Certified Mail a Claim against the USPTO, on March 30th, 2007, and
24 said Claim was eventually filed with the USPTO with an acceptance date of April 5th, 2007. The
25 USPTO rejected Plaintiff's Claim in a letter dated October 3rd, 2007.

1 As the entire file wrapper, including Office Actions can be used as evidence in Ex parte
2 Reexaminations, interference proceedings and infringement litigation, it is the assertion of the
3 Plaintiff that an examination/prosecution of a patent application must be made in a professional
4 manner by an competent and experienced examiner of the Art to which an invention most clearly
5 pertains or is related thereto to have any value.

6 The value of a granted patent is commensurate with the nature of the
7 examination/prosecution of a patent application. A poor examination/prosecution of a patent
8 application places an unnecessary and unfair burden upon a patent owner in proceedings
9 regarding his or her patent as a patent owner will not only be faced with defending his or her
10 patent but in also defending the negligent actions of the USPTO and its employees.

11 The acts of negligence as enumerated above, some of which may seem petty in regards to
12 omitted words and misspellings, others more serious such as improper interpretation and
13 application of law, omission of pertinent portions of forms, confusion and intermixing of forms,
14 naked assertions lacking prima facie evidence or reference to statutory authority and pertinent
15 section of MPEP for rejection of claims, the willful disregard of the plain meaning of the
16 specification and claims and arguments made by Plaintiff as to what his invention was and
17 consisted of, and an overall lack of due care and diligence by the USPTO in actually doing
18 anything to aid in the examination/ prosecution of the Plaintiff's patent application and the
19 effective abandonment of Plaintiff's patent application by the USPTO, leaves grave doubts to be
20 held by the Plaintiff as to the whether or not Plaintiff's patent application was effectively
21 abandoned at the assignment of Plaintiff's patent application to Art Unit 3641 in general, and to
22 Michael Carone, Lulit Semunegus and John Radi, specifically.

1 The USPTO was negligent in examining/prosecuting Plaintiff's patent application to the
 2 point of destroying Plaintiff's monopoly rights to his invention. This damage is unrecoverable.
 3 Plaintiff has no confidence in the USPTO to perform a competent and professional
 4 examination/prosecution of Plaintiff's patent application, or any future application(s) for that
 5 matter. The Plaintiff has lost invaluable time and incurred extreme stress, physical pain and
 6 damage because of the actions and inaction of employees for the USPTO. The Plaintiff is
 7 entitled to the fair market value of his invention and compensation for injuries sustained in
 8 prosecuting Plaintiff's patent application under adverse and unfair conditions. The pattern of
 9 negligence by the USPTO and its employees will continue unless this Court implements the
 10 relief requested below.

11 **Relief:**

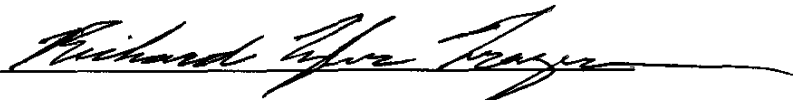
12 Wherefore, the Plaintiff prays for relief and judgment against all defendants, jointly and
 13 severally as follows:

14 **Remedies at Law:**

15 Awarding money damages, along with pre-judgment and post-judgment interest as
 16 provided by law, to Richard Tyler Frazer, as equitable relief in the amount of, \$12,000,000.00,
 17 U.S., is necessary to compensate the Plaintiff for his loss of time, health and monopoly control of
 18 his property.

19 Dated this 20th day of March 2008.

20 Plaintiff.....

21
 22 

23 Richard Tyler Frazer